

October 24, 2005

Post Confirmation Trust for  
Fleming Companies, Inc.  
5801 N. Broadway Ext Ste 100  
Oklahoma City, OK 73118

ATTN: Steve Eaton

**KIRKLAND & ELLIS LLP**  
AND AFFILIATED PARTNERSHIPS

200 East Randolph Drive  
Chicago, Illinois 60601  
FEIN 36-1326630

Inv.# 2961758

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IN THE MATTER OF            **Berry, Wayne Litigation**  
                                     **File No. 41445-0006**

For legal services rendered through September 30, 2005 (see attached Description of Legal Services for detail)	\$ 55,618.75
For disbursements incurred through September 30, 2005 (see attached Description of Expenses for detail)	\$ 2,254.89
Total for legal services rendered and expenses incurred	\$ 57,873.64

Post Confirmation Trust for  
Legal Services for the Period Ending September 30, 2005  
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Summary of Hours Billed

<u>Timekeeper</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Erin N Brady	9.25	455.00	4,208.75
Damian D Capozzola	61.00	515.00	31,415.00
Eric C Liebeler	4.50	625.00	2,812.50
Romana O Samad	19.50	340.00	6,630.00
Richard L Wynne	2.50	775.00	1,937.50
Allison Mayo Andrews	1.00	200.00	200.00
Neal F San Diego	76.50	110.00	8,415.00
<b>Total</b>	174.25		\$ 55,618.75

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### Description of Legal Services

<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
9/01/05	1.50	Erin N Brady	Review, analyze and comment on Berry objection to proof of claim; research re basis for abstention.
9/01/05	.50	Romana O Samad	Review local rules and send original declarations via fed ex to comply with local rules.
9/01/05	4.00	Neal F San Diego	Analyze and prepare correspondence with attachments for indexing (1.0); index correspondence with attachments into case management database (3.0).
9/02/05	4.00	Neal F San Diego	Index pleadings with attachments into case management database (1.5); image pleadings with attachment into database (2.5).
9/02/05	.25	Damian D Capozzola	Communications and analysis re case management and strategy issues.
9/06/05	1.50	Erin N Brady	Review and analyze draft objection to Berry claims; research case law re bringing litigated claims to bankruptcy court for allowance.
9/06/05	5.00	Neal F San Diego	Index pleadings with attachments into case management database (4.0); image pleadings with attachments into database (1.0).
9/06/05	3.25	Damian D Capozzola	Communications and analysis re case management and strategy issues; review and revise brief re administrative claims, and select and prepare exhibits re same; analysis of statutory provisions and communications with E. Brady re same.
9/06/05	.75	Eric C Liebeler	Discuss administrative claims with E. Brady, D. Capozzola.
9/07/05	4.00	Neal F San Diego	Index correspondence with attachments

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			into case management database (3.0); image correspondence with attachments into database (1.0).
9/07/05	.50	Damian D Capozzola	Revise administrative claim objection; communications with L. Smith, J. Kinrich, and M. Walker re case management and strategy issues.
9/08/05	4.00	Neal F San Diego	Index correspondence with attachments into case management database.
9/08/05	.25	Damian D Capozzola	Communications with L. Smith and A. Teranishi re case management and strategy matters.
9/09/05	1.50	Erin N Brady	Telephone conference with G. Shaw re settlement authority; review plan and PCT Agreement re same; review memorandum re same; draft email to E. Liebeler, R. Wynne and G. Shaw re settlement authority issues; discuss same with R. Wynne.
9/09/05	5.00	Neal F San Diego	Index correspondence with attachments into case management database (4.0); image correspondence with attachments into database (1.0).
9/11/05	.25	Damian D Capozzola	Review discovery appeal from W. Berry re F-1 issues.
9/12/05	3.00	Neal F San Diego	Index correspondence with attachments into Lotus notes database.
9/12/05	1.50	Damian D Capozzola	Communications with L. Smith re Guidance production; prepare for and participate in conference call with R. Mersky and O. Samad re APS claim, and communications with team members re same; review W. Berry brief re F-1 project and communications re response.
9/13/05	4.50	Neal F San Diego	Analyze and prepare correspondence with attachments for indexing (1.0); index correspondence with attachments into case management database (3.5).

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<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
9/14/05	2.00	Romana O Samad	Check status of 9th Circuit appeal, review dockets for cross appeal docket nos. 05-15223 and 05-15347; review all local rules and calendar our response date to oppose Berry's appeal in Hawaii District Court.
9/14/05	3.00	Neal F San Diego	Index correspondence with attachments into Lotus notes database.
9/14/05	5.25	Damian D Capozzola	Analysis and communications re prepetition appeal issues; review and revise objection to administrative claim and communications with E. Liebeler and E. Brady re same; research re administrative claim and Reading Co. issues; communications with T. Hogan re administrative claims and potential stipulation.
9/15/05	.25	Erin N Brady	Review email correspondence re Hogan response to Stipulation.
9/15/05	.50	Romana O Samad	Work with A. Teranishi re whether L.R. 74.1 applies to cases where Magistrate has not adopted the Master's order from 8/29.
9/15/05	3.50	Neal F San Diego	Index pleadings with attachments into case management database (2.5); image pleadings with attachments into database (1.0).
9/15/05	1.00	Neal F San Diego	Organize and prepare a binder for use by D. Capozzola re W. Berry's opposition on motion for summary judgment re damages.
9/15/05	3.25	Damian D Capozzola	Review Berry appeal re F-1 issues and draft response; analysis and communications re Berry reply to summary judgment motion.
9/15/05	2.75	Damian D Capozzola	Review and analysis of Berry summary judgment opposition; complete and circulate draft response re F-1 appeal.

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<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
9/16/05	2.50	Neal F San Diego	Index pleadings with attachments into case management database.
9/16/05	2.00	Neal F San Diego	Organize, prepare and deliver 2 copy sets of W. Berry's response and opposition re motion for summary judgment for use by expert, J. Kinrich.
9/16/05	2.00	Damian D. Capozzola	Revise objection re administrative claims and communications re completed draft.
9/16/05	1.00	Eric C Liebeler	Review Berry's opposition to PCT's summary judgment motion re damages.
9/17/05	1.00	Erin N Brady	Review, analyze and comment on Berry claim objection; exchange emails with D. Capozzola re same.
9/17/05	.25	Damian D Capozzola	Communications and analysis re administrative claim objection.
9/18/05	3.50	Erin N Brady	Revise Berry objection; research re procedural amendment issues; analyze proofs of claim; analyze issues and arguments for objection.
9/18/05	.50	Richard L Wynne	Analyze Berry objection to claim.
9/18/05	.50	Romana O Samad	Research when appeal re pre-petition hearing is likely to occur in 9th Circuit.
9/19/05	.25	Romana O Samad	Review correspondence re plaintiff's premature appeal re F-1 issues
9/19/05	2.50	Neal F San Diego	Image correspondence with attachments into case management database.
9/19/05	1.00	Damian D Capozzola	Review and revise administrative claims objection and communications with E. Brady re same.
9/20/05	.25	Richard L Wynne	Telephone conference with D. Capozzola re Berry objection and E. Liebeler re Berry objection.

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<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
9/20/05	1.00	Romana O Samad	Review all the documents filed by plaintiff to strategize response.
9/20/05	1.50	Damian D Capozzola	Review and revise administrative claim objection.
9/20/05	3.25	Damian D Capozzola	Review Berry summary judgment materials and draft e-mail to team members re issues for reply; communications and analysis re administrative claim objection.
9/21/05	.50	Richard L Wynne	Telephone conference with E. Brady and D. Capozzola re issues on berry administrative claim objection.
9/21/05	.50	Richard L Wynne	Analyze administrative claim objection.
9/21/05	.25	Richard L Wynne	Telephone conference with D. Capozzola and E. Liebeler re litigation extensions.
9/21/05	.50	Romana O Samad	Gather all briefing for summary judgment hearing.
9/21/05	1.00	Neal F San Diego	Organize and prepare documents for use by O. Samad re motion for partial summary judgment on damages.
9/21/05	4.75	Damian D Capozzola	Review and revise administrative claim objection and prepare exhibits; communications re case management and strategy issues; communications with J. Kinrich and K. Gold re Berry summary judgment opposition; review and analysis of Berry summary judgment exhibits.
9/22/05	.50	Romana O Samad	Update case deadlines and calendar with A. Andrews
9/22/05	3.50	Neal F San Diego	Index correspondence with attachments into case management database.
9/22/05	2.25	Damian D Capozzola	Review and analysis of Berry summary judgment opposition supporting

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<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
			materials and communications with J. Kinrich re same; analysis and communications with L. Smith re case management and strategy issues; communications with L. Smith and M. Walker re document production issues.
9/23/05	4.00	Neal F San Diego	Index correspondence with attachments into Lotus notes database (3.0); image correspondence with attachments into database (1.0).
9/23/05	5.00	Damian D Capozzola	Review and analysis of Berry summary judgment opposition and communications re reply; communications with J. Kinrich, K. Gold, and L. Smith re same.
9/24/05	2.00	Damian D Capozzola	Draft outline for Berry reply brief and communications re same.
9/25/05	5.00	Damian D Capozzola	Draft Berry summary judgment reply; communications with team members and analysis re same.
9/25/05	2.75	Eric C Liebeler	Work on summary judgment reply.
9/26/05	2.50	Romana O Samad	Research law prohibiting amending complaint, question of fact generated by contradictions by expert, and court's power to control its calendar.
9/26/05	3.50	Neal F San Diego	Analyze and prepare correspondence and pleadings for indexing (1.5); index correspondence with attachments into case management database (2.0).
9/26/05	2.75	Damian D Capozzola	Review and revise Berry summary judgment reply and communications with team members re same; communications with L. Smith and M. Walker re document production issues.
9/27/05	.50	Richard L Wynne	Analyze Berry PCT summary judgment motion.
9/27/05	.25	Romana O Samad	Research 9th Circuit rules re oral argument and notice of counsel.



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9/27/05	4.00	Neal F San Diego	Index correspondence and pleadings with attachments into case management database.
9/27/05	3.50	Damian D Capozzola	Communications with team members re summary judgment reply; conference calls with L. Smith, J. Kinrich, and K. Gold re reply report; review and revise summary judgment reply.
9/28/05	1.00	Allison Mayo Andrews	Assist with preparation of summary judgment reply brief.
9/28/05	1.00	Romana O Samad	Research issue of one statutory recovery.
9/28/05	2.00	Neal F San Diego	Cite check PCT's reply memo in support of partial motion for partial summary judgment on damages.
9/28/05	4.00	Neal F San Diego	Index correspondence with attachments into Lotus notes database (3.0); image correspondence with attachments into database (1.0).
9/28/05	3.50	Damian D Capozzola	Review and revise summary judgment reply papers; conference call with L. Smith, J. Kinrich, and K. Gold re same.
9/29/05	6.00	Romana O Samad	Begin cite and fact-checking brief; research congressional history of statute; research and draft sections on other tort actions under Hawaii law.
9/29/05	3.50	Neal F San Diego	Cite and factual check PCT's reply memo in support of partial motion for partial summary judgment.
9/29/05	1.50	Neal F San Diego	Index correspondence with attachments into case management database.
9/29/05	5.75	Damian D Capozzola	Communications re case management issues; revise summary judgment reply and related papers and prepare for filing.

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<u>Date</u>	<u>Hours</u>	<u>Name</u>	<u>Description</u>
9/30/05	4.00	Romana O Samad	Finalize all document for filing.
9/30/05	1.50	Neal F San Diego	Final cite checking for PCT's reply memo re partial motion for partial summary judgment.
9/30/05	1.25	Damian D Capozzola	Finalize Berry brief for filing; analysis and communications with L. Smith and M. Walker re Guidance Software and document production issues.
	174.25		TOTAL HOURS

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### Description of Expenses

<u>Date</u>	<u>Description</u>	<u>Amount</u>
6/16/05	Overtime Meals Edgar I Yep	9.00
7/14/05	West Publishing-TP,Database Usage 7.05	36.40
7/15/05	West Publishing-TP,Database Usage 7.05	47.45
7/18/05	West Publishing-TP,Database Usage 7.05	66.41
7/19/05	West Publishing-TP,Database Usage 7.05	11.61
7/19/05	West Publishing-TP,Database Usage 7.05	61.32
7/19/05	West Publishing-TP,Database Usage 7.05	46.13
7/20/05	West Publishing-TP,Database Usage 7.05	9.25
7/21/05	West Publishing-TP,Database Usage 7.05	172.49
7/22/05	FedEx, Anne Lopez,HONOLULU,HI from:Neal San Diego	30.33
7/22/05	West Publishing-TP,Database Usage 7.05	33.57
7/22/05	West Publishing-TP,Database Usage 7.05	109.21
7/26/05	Telephone, Telephone call to: STATE OF,HI 808-535-5711	4.00
7/26/05	Telephone, Telephone call to: S SAN,CA 650-331-0200	.80
7/27/05	Telephone, Telephone call to: S SAN,CA 650-331-0200	.80
7/28/05	West Publishing-TP,Database Usage 7.05	.15
8/02/05	Computer Database Research, 8.05	47.29
8/03/05	Computer Database Research, 8.05	17.23
8/04/05	Computer Database Research, 8.05	67.34
8/05/05	CD-ROM Duplicates	15.00
8/08/05	Computer Database Research, 8.05	19.20
8/09/05	Telephone, Damian Capozzola, Cellular Service, Cingular, 8/9/05-9/8/05, 08/09/05, (Telephone Charges)	4.40
8/09/05	Computer Database Research, 8.05	13.54
8/12/05	Computer Database Research, 8.05	6.37
8/13/05	Computer Database Research, 8.05	42.88
8/17/05	Computer Database Research, 8.05	179.65
8/18/05	FedEx, Wendy K. Adams,SAN FRANCISCO, CA from:R. Olivia Samad	47.25
8/22/05	Computer Database Research, 8.05	5.82
8/24/05	WESTERN MESSENGER - Outside Messenger Services - 8/19/05 Appeals 9th circuit, San Francisco, CA	17.25
8/24/05	Computer Database Research, 8.05	15.53
8/24/05	Computer Database Research, 8.05	74.81
	Tabs/Indexes/Dividers	61.50
8/26/05	FEDERAL EXPRESS CORPORATION - Overnight Delivery- 08/19/05 - From: F. Carlow/	16.09

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8/28/05	To: T. Hogan Telephone, Damian Capozzola, Cellular Service, Cingular, 7/29/05-8/28/05, 08/28/05, (Telephone Charges)	1.98
8/29/05	Telephone, Telephone call to: SANFRNCSCO,CA 415-556-9800	1.00
8/31/05	FedEx, Ann Teranishi,HONOLULU,HI from:Neal San Diego	14.06
9/06/05	Fed Exp to:Ann Teranishi,HONOLULU,HI from:Damian Capozzola	14.13
	Color Copies	390.00
9/14/05	Telephone call to: OAHU,HI 808-528-0100	.80
9/21/05	Fax Charge, 562-795-5821	.75
9/22/05	Telephone, Telephone call to: S SAN,CA 650-331-0200	1.20
9/23/05	Telephone, Telephone call to: STATE OF,HI 808-535-5711	5.80
9/27/05	Telephone, Telephone call to: STATE OF,HI 808-535-5711	.60
	Scanned Images	44.40
9/30/05	Fax Charge, 312-280-1748	2.25
9/30/05	Fax Charge, 312-280-1748	2.25
	Standard Copies	485.60
	Total Expenses	\$ 2,254.89